

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,

CASE NO. CR11-0120-JCC

10 Plaintiff,

MINUTE ORDER

11 v.

12 GLEN THOMAS STEWART,

13 Defendant.
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15 The following Minute Order is made by direction of the Court, the Honorable John C.
16 Coughenour, United States District Judge:

17 This matter comes before the Court on Mr. Stewart's *pro se* motions for a certificate of
18 appealability (Dkt. No. 1202) and to proceed *in forma pauperis* (Dkt. No. 1203). Mr. Stewart
19 originally filed his motion for a certificate of appealability ("COA") with the Ninth Circuit Court
20 of Appeals (Dkt. No. 1202 at 3). The Ninth Circuit forwarded the request to this Court on April
21 19, 2018. (*Id.*) Despite the motion's title, it appears that Mr. Stewart seeks certification allowing
22 him to file a second or successive 2255 petition, rather than a COA.¹ (*Id.* at 4.) Mr. Stewart seeks
23 to file a successive 2255 petition based on newly discovered evidence. (*Id.*) To do so, he must
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25 ¹ A motion for a COA would be properly presented in the district court. However, this
26 Court has already denied Mr. Stewart's motion for a COA on his initial 2255 petition. (*See* Case
No. C13-2043-JCC, Dkt. No. 29.) The Court has yet to rule on any successive 2255 petition.

1 obtain leave from the Court of Appeals. 28 U.S.C. § 2244(b)(3)(A). This Court referred Mr.
2 Stewart's prior motion for leave to file a successive 2255 petition to the Ninth Circuit on
3 December 14, 2016. (Dkt. No. 1173.) Mr. Stewart has not indicated that the Ninth Circuit has
4 ruled on this motion. Therefore, in an abundance of caution, the Court REFERS Mr. Stewart's
5 present motion (Dkt. No. 1202) to the Ninth Circuit Court of Appeals to determine whether leave
6 to file a successive 2255 petition is merited.² See Ninth Circuit Rule 22-3(a) (if a motion for
7 leave to file a second or successive petition is mistakenly submitted to the district court, it shall
8 be referred to the court of appeals).

9 As to Mr. Stewart's motion to proceed *in forma pauperis*, the Court notes that no filing
10 fee is required when a petitioner moves for leave to file a second or successive 2255 petition.
11 Ninth Circuit Rule 22-3(a). Therefore, the motion (Dkt. No. 1203) is hereby STRICKEN as
12 moot.

13 DATED this 27th day of April 2018.

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15 William M. McCool
Clerk of Court

16 s/Tomas Hernandez
17 Deputy Clerk
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25 ² The Court notes that on April 25, 2018, the Ninth Circuit issued a time schedule order
26 in response to Mr. Stewart's "motion for a certificate of appealability (COA) and permission to
proceed *in forma pauperis*." (Dkt. No. 1205.) The Court refers Mr. Stewart's motion back to the
Court of Appeals in order to clarify the relief it perceives Mr. Stewart to be seeking.